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18 REED, and COASTAL PROTECTION
RANGERS, INC.
19

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
22

23 CORY SPENCER, an individual;
24 DIANA MILENA REED, an
individual; and COASTAL
25 PROTECTION RANGERS, INC., a
26 California non-profit public benefit
corporation,

27
28 Plaintiffs,

CASE NO. 2:16-cv-02129-SJO (RAOx)
**DECLARATION OF SAMANTHA
WOLFF IN SUPPORT OF
PLAINTIFFS' MOTION AND
MOTION FOR ADMINISTRATIVE
RELIEF PURSUANT TO FRCP 56(d)**

1
2 v.

Judge: Hon. S. James Otero
Date: September 5, 2017
Time: 10:00 a.m.
Crtrm.: 10C

3 LUNADA BAY BOYS; THE
4 INDIVIDUAL MEMBERS OF THE
5 LUNADA BAY BOYS, including but
6 not limited to SANG LEE, BRANT
7 BLAKEMAN, ALAN JOHNSTON
8 AKA JALIAN JOHNSTON,
9 MICHAEL RAE PAPAYANS,
10 ANGELO FERRARA, FRANK
11 FERRARA, CHARLIE FERRARA,
and N. F.; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
KEPLEY, in his representative
capacity; and DOES 1-10,

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

12 Defendants.

13
14 I, Samantha Wolff, declare as follows:

15 1. I am a Partner with the law firm Hanson Bridgett LLP, counsel of
16 record in this matter for Plaintiffs Cory Spencer, Diana Milena Reed, and the
17 Coastal Protection Rangers, Inc. ("Plaintiffs"). This declaration describes the
18 discovery that Plaintiffs need to fully oppose Defendants motions for summary
19 judgment and the efforts that Plaintiffs have undertaken to try to secure such
20 discovery. I have personal knowledge of the matters set forth in this declaration and
21 could and would competently testify to them. All of the matters stated here are
22 known to me personally, unless stated on information and belief; and with regard to
23 those statements, I am informed and reasonably believe them to be true. I submit
24 this declaration in support of Plaintiffs' Motion for Administrative Relief Pursuant to
25 FRCP 56(d).

26 2. Defendants' summary judgment motions claim that they are entitled to
27 summary judgment because Plaintiffs purportedly have not adduced evidence of
28 liability. Plaintiffs contend that the individual defendants of the Bay Boys' have

1 violated of the Bane Act and the California Coastal Act. Plaintiffs further contend
2 that they are liable for public nuisance, assault, battery, and negligence. Plaintiffs
3 also contend that the City of Palos Verde Estates (“PVE”) and the Chief of Police
4 Jeffrey Kepley have violated Section 1983 for violations of the Equal Protection
5 Clause. Plaintiffs contend that the Defendants operate in a conspiracy to preclude
6 ‘outsiders’ from enjoying Lunada Bay, and that the conspiracy is conducted through
7 electronic communications such as email and text messages.

8 3. To gather evidence, Plaintiffs have requested discovery of Defendants
9 including their cellular phone text messages. Defendants however, either have not
10 completed their production or completed after required by a court and improperly
11 redacted. Plaintiffs continue with their diligent efforts to gather the necessary
12 discovery, but Defendants are making every effort to avoid discovery.

13 4. Plaintiffs expect to gain facts through additional discovery in this
14 matter that would demonstrate the existence of the conspiracy to preclude outsiders
15 from Lunada Bay. Such evidence is kept on the Defendants’ and City officials’ cell
16 phones in the form of text messages between and among the Defendants.
17 Documents made available through discovery in this case demonstrate that there are
18 additional facts likely to exist in documents not yet produced or through deposition
19 testimony of pertinent witnesses.

20 5. In particular, Plaintiffs have a dispute with the City of Palos Verde
21 Estates regarding the scope of documents that must be gathered. Plaintiffs contend
22 that the City must gather and produce documents, including text messages, stored on
23 the personal cell phones of police officers and City officials to the extent that those
24 phones were used in official business. Plaintiffs are further are awaiting discovery
25 from the cell phone of Michael Papayans, whose cell phone was impounded by the
26 Los Angeles Police Department as part of a criminal investigation. The cell phone
27 was only recently released, and now the parties are negotiating the search
28 parameters and addressing password-protection problems. Plaintiffs further have a

1 dispute with Charlie and Frank Ferrara who only produced their text messages after
2 a Court order, and well after the date that the Court required, and then improperly
3 redacted the documents before production. Because the documents were produced
4 during the time that Plaintiffs were preparing eight oppositions to summary
5 judgment, Plaintiffs have not had sufficient time to address the deficiencies of
6 Charlie and Frank Ferrara's production.

7 6. Each of these discovery sources can implicate either one, a subset, or
8 all of the Defendants in the scheme and agreement to keep the so-called "riffraff"
9 out of Lunada Bay through violence and intimidation, depending on whom is texting
10 and whom is receiving the text.

11 7. Attached as **Exhibit 1** is a true and correct copy of Plaintiff Cory
12 Spencer's Request for Production of Documents Propounded to Defendant City of
13 Palos Verdes Estates (Set One).

14 8. Attached as **Exhibit 2** is a true and correct copy of Plaintiff Cory
15 Spencer's Request for Production of Documents Propounded to Defendant Michael
16 Papayans (Set One).

17 9. Attached as **Exhibit 3** is a true and correct copy of Plaintiff Cory
18 Spencer's Request for Production of Documents Propounded to Defendant Charlie
19 Ferrara (Set One).

20 10. Attached as **Exhibit 4** is a true and correct copy of Plaintiff Cory
21 Spencer's Request for Production of Documents Propounded to Defendant Frank
22 Ferrara (Set One).

23 11. Attached as **Exhibit 5** is a true and correct copy of a letter I sent to
24 Jacob Song, counsel for PVE, on November 22, 2016.

25 12. Attached as **Exhibit 6** is a true and correct copy of a letter I received
26 from Jacob Song, counsel for the City, on December 29, 2016.

27 13. On June 13, 2017, I engaged in a telephonic meet and confer discussion
28 with counsel for the City, Jacob Song. During that call, I requested information

1 regarding whether City employees have used personal devices for City business, and
2 advised that if so, Plaintiffs would be entitled to such information. Mr. Song
3 indicated that he would conduct an inquiry and advise Plaintiffs. The following
4 week, on June 23, 2017, I had a further phone call with Mr. Glos, also counsel for
5 the City. Mr. Glos indicated that he did not yet know whether City employees have
6 used personal devices for City business, but stated that he would follow up. It was
7 clear from these conversations that the City had not previously asked City officials
8 whether they possessed relevant information, despite discovery requests seeking this
9 information which had been propounded (and responded to) months prior.

10 14. Attached as **Exhibit 7** is a true and correct copy of Michael Papayans
11 Responses to Spencer's First Set of Request's for Production, served on March 20,
12 2017.

13 15. Attached as **Exhibit 8** is a true and correct copy of an email chain
14 between and among Peter Haven, counsel for Michael Papayans, Vic Otten, counsel
15 for Plaintiffs, and myself. Plaintiffs continue to demand production of responsive
16 documents and work with Mr. Haven to obtain access to Defendant Papayans'
17 phone.

18 16. On information and belief, Vic Otten met with the District Attorney
19 handling Michael Papayans' criminal case, and she informed him that he was
20 required to get a court order to get Papayans' cellular telephone released.

21 17. Attached as **Exhibit 9** is a true and correct copy of Defendant Charlie
22 Ferrara's Responses to Plaintiff Cory Spencer's Request for Production of
23 Documents, served on December 19, 2016.

24 18. Attached as **Exhibit 10** is a true and correct copy of Defendant Frank
25 Ferrara's Responses to Plaintiff Cory Spencer's Request for Production of
26 Documents, served on December 19, 2016.

27 19. Attached as **Exhibit 11** is a true and correct copy of Defendant Sang
28 Lee's privilege log, served on December 29, 2016.

1 20. Charlie and Frank Ferrara served responses to the document requests
2 on December 19, 2016, indicating that they had no responsive text messages. It was
3 only through the privilege log of co-defendant Sang Lee that Plaintiffs realized that
4 Charlie and Frank's earlier responses were untruthful. Sang Lee's privilege log
5 indicates that Frank and Charlie did indeed send or receive text messages that were
6 responsive to the RFPs. Through telephonic hearings with counsel for Charlie and
7 Frank Ferrara with Magistrate Judge Oliver, it became clear that Defendants Charlie
8 and Frank Ferrara responded to the document requests without ever conducting a
9 search of their cell phones to confirm the existence of responsive information.
10 Indeed, Charlie and Frank Ferrara's cell phones were not imaged until July 2017,
11 though they responded to the discovery in December 2016.

12 21. Beginning in January 2017, I conversed with counsel for Charlie and
13 Frank Ferrara on at least a half-dozen occasions to determine whether Charlie and
14 Frank Ferrara would agree to produce their cell phone bills and text messages
15 without a court order compelling them to do so. Attached as **Exhibit 12** is a true
16 and correct copy of an email exchange between myself and counsel for Defendants
17 Charlie and Frank Ferrara, dating from March 21, 2017 to April 17, 2017,
18 summarizing several of my meet and confer efforts. (The exhibits to this email
19 string are omitted because they are unnecessary and contain confidential information
20 implicating third-party privacy rights.) In or around June 2017, it became clear that
21 a court order would be necessary to compel the production of Defendants Charlie
22 and Frank Ferrara's information, given their intransigence. So on June 27, 2017, I
23 sent to Alison Hurley and Tiffany Bacon, counsel for Frank and Charlie Ferrara,
24 requesting that they make themselves available for a telephonic meet and confer. A
25 true and correct copy of this letter is attached as **Exhibit 13**.

26 22. Magistrate Judge Oliver held telephonic hearings to discuss Defendants
27 Charlie and Frank Ferrara's discovery on July 13, 2017 and July 26, 2017. During
28 the hearing on July 13, 2017, Magistrate Judge Oliver ordered both defendants to

1 produce responsive documents – including cell phone bills and text messages – by
2 5:00 p.m. on July 17, 2017. In violation of the Court’s Order, Defendants made
3 only a partial production on July 17 (after 5:00 p.m.), and then another partial
4 production after the close of business on July 21. As of Monday, July 24, 2017,
5 Defendant Charlie Ferrara still had not produced any data from his cell phone,
6 including his text messages. Further, upon review of the cell phone bills produced
7 by Frank Ferrara, it was clear that several of the earlier – and most critical – cell
8 phone invoices had been lost because neither defendant took steps to preserve this
9 evidence. The cell phone bills conveniently only date back to February 21, 2016,
10 while the events that gave rise to this lawsuit occurred on January 29, February 5,
11 and February 13, 2016.

12 23. Magistrate Judge Oliver held another telephonic hearing on July 26,
13 2017, during which time she again ordered the production of Charlie Ferrara’s cell
14 phone data that same day. Defendant Charlie Ferrara finally produced the
15 remainder of his cell phone extraction report after that hearing on July 26 – notably
16 two days after filing his motion for summary judgment. The productions of Charlie
17 and Frank Ferrara, however, are heavily redacted. For example, the totality of the
18 first 50 pages of Charlie Ferrara’s productions are nine (9) texts, and these are
19 simply texts of bible verses. Because Plaintiffs have been preparing oppositions to
20 eight summary judgment motions over that timeframe, Plaintiffs have not had
21 sufficient time to analyze the scope or completeness of the production or meet and
22 confer on the extent of the improper redactions. Nor have Plaintiffs had sufficient
23 time to cross-reference Defendants’ unredacted cell phone bills with those of the
24 other Defendants – a time-consuming process. Attached as **Exhibit 14** is a true and
25 correct copy of an Order issued by Magistrate Judge Oliver requiring that Frank
26 Ferrara and Charlie Ferrara “produce responsive documents from the cell phone
27 imaging and responsive cell phone bills and records by 5 p.m. on Monday, July 17,
28 2017.” Attached as **Exhibit 15** is a true and correct copy of the transcript of the

1 telephonic hearing before Magistrate Judge Oliver on July 26, 2017.

2 24. In total, Frank Ferrara produced 3,054 pages of documents on July 17
3 and 21, and Charlie produced 1,142 pages of documents on July 26 and 27.

4 25. On July 7, 2017, I deposed Defendant Charlie Ferrara. At his
5 deposition, I asked him if he has taken any steps to preserve evidence in this case
6 since the lawsuit was filed over a year ago. He responded that he has not taken any
7 steps to ensure the preservation of data. Charlie Ferrara Dep. 172:25-173:4. I
8 further asked him what efforts he has made to obtain his cell phone bills, to which
9 he responded: "I haven't really tried that hard, honestly." *Id.* at 164:13-7. Attached
10 as **Exhibit 16** is a true and correct copy of relevant portions of Charlie Ferrara's
11 deposition transcript. The fact that Charlie Ferrara has made no effort to preserve
12 evidence or obtain his cell phone bills is all the more egregious because, as I am
13 informed by his counsel Tiffany Bacon, his telephone company sequentially deletes
14 older invoices and only retains the most recent 18 months' worth of invoices.

15 26. In advance of the Defendants' summary-judgment motions, counsel for
16 Plaintiffs met and conferred with counsel for each party in June and July. I am
17 informed and believe that at each of these meetings, counsel for Plaintiffs stated
18 that, to the extent Defendants intended to file motions for summary judgment,
19 Plaintiffs were still not in possession of certain discovery which was relevant to
20 Plaintiffs' defense to the motions. Indeed, during a call with counsel for Defendants
21 Blakeman, Johnston, Papayans, Charlie Ferrara, Frank Ferrara, and Angelo Ferrara,
22 I advised the Defendants that Plaintiffs would seek relief under Rule 56(d) if they
23 moved forward with motions for summary judgment.

24 I declare under penalty of perjury under the laws of the United States of
25 America that the foregoing is true and correct. Executed in Walnut Creek,
26 California on August 8, 2017

27
28 /s/ Samantha D. Wolff

SAMANTHA D. WOLFF

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